

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

In re:

AMY JO L. KASKA

Debtor

**Case No. 19-41610-EJC
Chapter 13
Judge Coleman**

**NDF1, LLC
Movant,**

v.

**William John Kaska, Jr., Codebtor, and
O. BYRON MEREDITH, III,
Chapter 13 Trustee,
Respondents**

CONTESTED MATTER

CREDITOR NDF1, LLC'S MOTION FOR RELIEF FROM CODEBTOR STAY

Secured Creditor **NDF1, LLC** ("NDF1"), by its undersigned counsel, hereby moves for relief from the automatic stay of action against a codebtor pursuant to 11 U.S.C. § 1301(c) (the "Motion"). In support of this motion, NDF1 shows the following:

JURISDICTION AND STATUTORY PREDICATES

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. § 1301(c).

PROCEDURAL AND FACTUAL HISTORY

2. On November 12, 2019 (the “Petition Date”), Amy Jo L. Kaska (the “Debtor”) filed a voluntary petition for relief under chapter 13 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Georgia (the “Court”). *See* Doc 1.

3. O. Byron Meredith (the “Trustee”) is the Chapter 13 Trustee.

4. Debtor filed her Schedules on the Petition Date. *See id.*

5. On the Petition Date, the Debtor filed her initial Chapter 13 Plan (the “Plan”), *see* Doc 5, which Plan was confirmed on April 15, 2020, *see* Doc 29.

6. Partners for Payment Relief DE IV, LLC (“Partners”) filed Claim 8-1 on December 10, 2019, asserting a claim in the amount of \$41,282.82 secured by the Debtor’s primary residence. *See* Claim 8-1.

7. Partners asserts its claim by virtue of a Fixed Rate Note dated September 30, 2005, made by Amy Joe Lynn Kaska and William John Kaska, Jr. (“Codebtor”), in the original principal amount of \$36,800.00 (the “Note”) and a series of allonges transferring same from the original lender to Partners.

8. Pursuant to a Security Deed (the “Security Deed”), the indebtedness evidenced by the Note is secured by real estate located at 206 Wood Duck Way, Springfield, GA 31329, more fully described as follows:

All that certain lot, tract or parcel of land situate, ling and being in the 11th G.M. District, Effingham County, Georgia, containing 0.56 of an acre, more or less, known and designated as Lot No. 23, Phase 2, Eagle Pointe Subdivision, that is shown and more particularly described by the plat of survey made by Charles W. Tuten, Jr., R.L.S. #2345, dated April, 2004, recorded in the Office of the Clerk of the Superior Court of Effingham County, Georgia, in Plat Cabinet C, Slides 42 F-1, which are incorporated into this description by specific reference thereto.

This being a portion of that same property conveyed by Springfield Investment Company to Terry Powell Construction Company, Inc. as evidenced by that certain Warranty Deed dated August 19, 2004, recorded in Deed Book 1162, page 308, aforesaid records.

SUBJECT HOWEVER to all restrictive covenants, easements and rights-of-way of record.

SUBJECT, HOWEVER, to that certain deed to secure debt from Amy Joe Lynn Kaska and William John Kaska, Jr. to GMFS dated September 30, 2005 and recorded in Deed Book 1349, page 389, aforesaid records. A default in the indebtedness owed to GMFS shall constitute a default hereunder.

(the “Property”).

9. Claim 8-1 has been subsequently transferred to NDF1. *See* Doc 61.

10. Pursuant to the Plan, the Property had two liens against it as of the Petition Date, including the claim filed by NDF1.

11. Section 9 of the Plan provided that the Property “is surrendered to the creditor to satisfy the secured claim to the extent shown below upon confirmation of the plan.” This Section further provides that “upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under 11 U.S.C. § 1301 be terminate in all respects.”

12. The Plan was confirmed by the Court.

13. Out of an abundance of caution, before proceeding with foreclosure efforts against the Property, NDF1 seeks an Order confirming that the codebtor stay has been terminated.

GROUND FOR RELIEF

14. 11 U.S.C. § 1301(c)(2) provides that the Court “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that... the plan filed by the debtor proposes not to pay such claim.”

15. With respect to this Property, the Debtor has surrendered the Property through the plan, and thus does not propose to pay NDF1’s claim.

16. WHEREFORE, for the reasons set forth above, NDF1 prays that a hearing be scheduled in this matter, that NDF1's requested relief from the codebtor stay be granted to allow NDF1 to dispose of the aforementioned Property in accordance with its contractual and state law remedies, that the fourteen-day stay provided for in Bankruptcy Rule 4001(a)(3) be waived, and for such other relief as the Court deems just and proper.

Dated: July 14, 2022

/s/ Brian Goldberg
BRIAN GOLDBERG
Georgia Bar No. 128007
Attorney for Creditor

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that I am, and at all times hereinafter mentioned, was more than 18 years of age, and that I served a copy of the Notice and Motion for Relief from Codebtor Stay on counsel for the Debtor and the Trustee by electronic service via the Court's CM/ECF system and also by U.S Mail to the Debtor at the following address:

William John Kaska, Jr.
206 Wood Duck Way
Springfield, GA 31329

/s/ Brian Goldberg
BRIAN GOLDBERG
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